

**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD**

IN RE:

SECURUS TECHNOLOGIES, LLC

DOCKET NO. TF-2019-0033

**PRISON POLICY INITIATIVE’S COMMENTS REGARDING
SECURUS TECHNOLOGIES’ REVISED TARIFF**

Pursuant to the Board’s order of November 13, 2020, Securus Technologies, LLC (“Securus”) filed a revised tariff in the above-captioned proceeding on January 29, 2021 (the “Revised Tariff”). The Prison Policy Initiative (“PPI”), having previously been granted leave to intervene in this proceeding, submits the following comments for the Board’s consideration. PPI encourages the Board to withhold approval of the Revised Tariff because of two unresolved issues. First, the proposed treatment of unused prepaid funds raises serious questions about Securus’s earning of unreasonable profits. Second, recently produced evidence indicates that Securus’s single call product may steer consumers into paying more for calls than necessary.

I. The Board Should Not Allow Securus to Reap Unearned and Unjust Profits by Retaining Unspent Consumer Funds

Broadly speaking, Securus allows end-users to pay for calls through three different types of prepayments: debit accounts (owned by incarcerated callers), tangible calling cards (distributed inside correctional facilities), and AdvanceConnect accounts (owned by non-incarcerated customers). As explained below, PPI objects to the Revised Tariff’s forfeiture provisions governing the last two of these three products.

A. The Board Should Require Securus to Remit Unused Consumer Funds on Tangible Prepaid Calling Cards to the State Treasurer As Unclaimed Property

In its Order Requiring Filing of Revisions to Revised Tariff and Granting Confidential Treatment, entered on November 13, 2020 (the “November 13 Order”), the Board highlighted a troublesome provision in Securus’s previous proposed tariff: unused funds on tangible prepaid calling cards are subject to forfeiture 180 days from the date of first usage. The Board stated that

it “does not consider that to be a reasonable provision,” and reiterated that it is “important that any unused balances on calling cards be refunded to the inmate.” Nov. 13 Order at 6.

In comments filed in support of its Revised Tariff, Securus insists that it cannot revise the 180-day forfeiture provision, but its proffered explanations are unpersuasive. Throughout this proceeding, PPI has advocated that unused prepaid funds should be remitted to the Iowa treasurer’s unclaimed property program. While Securus advances several excuses for imposing a 180-day forfeiture provision, these attempted justifications studiously ignore the availability of the unclaimed property program.

Securus first claims that it “never receives payment from an incarcerated person for the card.” Securus Comments (Jan. 29, 2021) at 5. But this is merely a distraction—as Securus subsequently admits, it *does* receive cash in exchange for the calling cards; those funds are simply routed through another party (i.e., the correctional facility pays Securus for the cards, and then resells them to incarcerated customers). Because the prepaid calling cards are issued in exchange for cash payment, the unspent cash is susceptible to administration under the unclaimed property program regardless of whether there is a direct exchange between Securus and the card holder.

Second, Securus argues that it sells the cards to correctional facilities at a discount. *Id.* at 5-6. This too is irrelevant, since Iowa’s unclaimed property program covers several types of instruments that are commonly issued by agents who deduct a fee and then remit the net proceeds to the instrument’s issuer. *See* Iowa Code §§ 556.2A (traveler’s checks), 556.9(1)(c) (gift certificates). The issuer of any such instrument must remit the face value of the unclaimed instrument and should take this dynamic into account when pricing its products. This system has worked in Iowa since it enacted the unclaimed property statute in 1967, and there is no need to create an exception simply because Securus wishes the law was different.

Securus next argues that it cannot refund unused balances on prepaid calling cards because it does not collect information on the identity of the card holders. Based on the facts in the record, this argument is completely unavailing. Securus has stated that it issues calling cards

in denominations of \$5, \$10, or \$15. Securus Cmts. at 6. The state treasurer does not require a property-owner name for any unclaimed property with a value of less than \$50. Iowa Code § 556.11(2)(a). Accordingly, the lack of an account-holder name is immaterial.¹

Finally, Securus argues that it must impose an expiration date “because of the administrative burdens of keeping an unlimited number of accounts open for an unlimited amount of time.” *Id.* This argument fails because Securus could still achieve this goal by simply remitting the unspent funds to the Treasurer at the time that it closes the prepaid account.

In the November 13 Order, the Board clearly ruled that Securus’s forfeiture provision for calling cards was unreasonable. Rather than modifying its tariff to respond to the Board’s concerns, Securus has simply thrown up a smokescreen of meritless arguments. In the absence of a compelling justification, the Board should not approve the Revised Tariff’s forfeiture provision regarding tangible calling cards.

B. The Board Should Reject Securus’s Unexplained About-Face Concerning Unspent Funds in AdvanceConnect Accounts

Early in this proceeding, Securus advanced an image of being a consumer-friendly carrier with respect to prepaid accounts. The Revised Tariff backtracks on this earlier stance, but Securus has not provided any meaningful explanation for the sudden change.

Non-incarcerated end-users of Securus’s services may prepay for service by establishing a customer account that Securus describes as an “AdvanceConnect Account.” *See* Rev. Tariff § 3.3.4. PPI and the Office of Consumer Advocate have consistently raised questions about various carriers’ treatment of prepaid amounts. At the technical conference that the Board held in this proceeding on September 3, 2020, Craig Graziano of the OCA asked several questions about Securus’s handling of prepaid funds. In regards to the AdvanceConnect product, the

¹ PPI respectfully suggests that Board staff may want to consult with the treasurer’s office regarding how prepaid card holders may be able to claim expired funds. Presumably the calling cards must be branded with a unique identifier in order for Securus to track available balances. If the treasurer received the unique identifier along with the unspent balance, then he could presumably issue refunds to any cardholder who is able to provide the unique identifier of their card.

following colloquy took place between Mr. Graziano and Securus's representative, Michael Lozich:

LOZICH: What happens with AdvanceConnect accounts is that the account balance is going to be available for refund to the consumer upon request. After 90 days of non-use of the account—it's sat dormant, nobody's made any phone calls—Securus will suspend the account to prevent misuse or fraud. But the account holder, *at any time*, can call and reactivate the account by contacting Securus. At 180 days with no activity on the account, the account expires, but *Securus will honor any refund requests or reactivate the account if requested*. [emphasis added]

GRAZIANO: What if no request is received? Is the money just forfeited, or is there some kind of notice, or is that language that you're willing to look at?

LOZICH: If no [inaudible], the funds stay available for whenever they contact us.

GRAZIANO: I thought you said the account expired.

LOZICH: The account expires, but the balance—you know, the funds remain available. The thing about the accounts, administering the accounts, we literally have hundreds of thousands, if not millions, of accounts. And if an account is not being used, we just need to shut it down. We try to maintain a pretty liberal approach to this, if the consumer contacts us and they say "You know, by the way, I need to reactivate this account," or "Hey, I had this account, and I have a statement that shows there's a \$20 balance, I'd like to get that refunded," we'll honor that.

Following the September 3 technical conference, the Board entered the November 13 Order, which summarized Securus's remarks regarding unused AdvanceConnect balances and directed Securus to include in its revised tariff "a statement . . . that a customer may request a refund at any time, even after the account has expired." Nov. 13 Order at 7.

Instead of amending its tariff to conform with the statements made during the technical conference, Securus instead has modified the tariff to impose a one-year forfeiture provision on AdvanceConnect accounts. Rev. Tariff § 3.3.4(c). This change is wholly unacceptable and the Board should unambiguously reject the new tariff language. Either Securus has changed its liberal refund practices upon the Board's request that consumers be notified of the actual refund terms; or, Securus has never honored requests to refund expired account balances and the statements at the technical conference were inaccurate. Under either scenario, Securus has provided no evidence to suggest that a one-year forfeiture provision is just and reasonable under

Iowa Code § 476.8. Because Securus is able to track prepaid funds for purposes of billing calls and closing inactive accounts, it has the information necessary to refund consumers' money. If Securus does not want the responsibility of processing refund requests, then it can easily avoid this workload by remitting dormant-account funds to the treasurer's unclaimed property program.

When customers fund AdvanceConnect accounts, they provide money to Securus for the purpose of purchasing communications services. For Securus to not provide such a service and still pocket these funds based on an arbitrary cut-off date is a per se "unreasonable profit" prohibited by Iowa Code § 476.8(2). Accordingly, the Board should not approve the Revised Tariff unless this account forfeiture provision is removed.

II. Recently Obtained Evidence Suggests that Securus's Single Call Product May Confuse Consumers and Encourage Economically Inefficient Choices

Section 3.3.5 of the Revised Tariff describes a "single call" product, that "allows a Consumer who does not have an AdvanceConnect Account . . . to pay for a single call using a credit card or debit card." PPI has long expressed concern about the use of this product, because it potentially steers end-users to incur automated payment fees on a per-call basis, which can be considerably more expensive than incurring such fee once for making a prepayment that can then be used to pay for multiple future calls. PPI raised these concerns at the September 3 technical conference. Mr. Lozich responded, in part: "The way our standard call flow is set up, is we do inform consumers that they don't have to accept the call, and they can also terminate the call and set up an account."

In response to PPI's concerns, Securus agreed at the technical conference to provide a sample of the scripted prompts used in connection with its single call product. Declaration of Peter Wagner (attached hereto) ¶ 2. The Board subsequently formalized this agreement in its post-conference order and stated that "If PPI has an issue with the call script, PPI will need to file a pleading with the Board describing the issue." Nov. 13 Order at 7. Securus provided PPI

with a copy of the call script on January 29, 2021, and a copy is provided herewith. *See* Wagner Decl., Exh. 1.

Based on the script provided by Securus, PPI reiterates its concerns about the potential for the single-call product to inappropriately steer consumers into paying numerous unnecessary automated payment fees. Our specific concerns, along with suggested solutions, are outlined below.

Ambiguity regarding AdvanceConnect account status. Page 2 of the call script indicates that call recipients who have AdvanceConnect accounts with insufficient funds hear the same message as recipients who do not have an AdvanceConnect account.² The structure of the call flow indicates that Securus's network is capable of determining whether there is an AdvanceConnect account associated with the called number, and whether such account has funds sufficient to pay for the present call. Accordingly, Securus should use this technology to provide individualized information to call recipients: callers with insufficient AdvanceConnect balances should be given instructions on how to fund that account, while callers who do not have an AdvanceConnect account should hear a more informative prompt such as: "You may pay for this call now, or if you expect to receive multiple calls from this correctional facility, you can create a prepaid account that may save you money."

Menu options create unnecessary burdens to establishing an AdvanceConnect account.

The most problematic aspect of the call script is the menu options that the call recipient receives. These options are:

To pay for just this call using your credit or debit card, press "1."

To decline this call, press "2."

To block calls from this facility, press "6."

If you do not want to connect this call but would like to fund an account for future calls, please hang up and call 800.844.6591.

Wagner Decl., Exh. 1 at 2. In several respects, this structure nudges consumers into making economically inefficient choices. First, it is highly probable that many call recipients will not be

² "Called party hears: 'Our records show you do not have an account or enough funds to complete this call.'" Wagner Decl., Exh. 1, at 2.

prepared to write down the ten-digit phone number that Securus expects them to call to establish an AdvanceConnect account. Given that Securus routinely boasts of its “superior communications services,”³ it should be able to connect the caller to the 800-844-6591 number with a single-digit menu option (e.g., “If you would like to fund an account for future calls, press 4.”).

Second, by offering the single call option as the first choice, and the AdvanceConnect funding option as the last choice, the call flow runs the risk of either confusing call recipients or steering them toward choosing the single call product without fully understanding the impact of that choice. A more informative call flow would provide basic detail about the AdvanceConnect option, and place this information *before* the call-blocking option. For example:

To pay for just this call using your credit or debit card, press 1.

To decline this call, press 2.

To decline this call and create a prepaid account to accept calls in the future, press 3.

To pay for this call with your credit or debit card, and create a prepaid account for future calls, press 4.⁴

Also, recall PPI’s earlier suggestion that the recording *begin* with an explanation that creation of a prepaid account may save money. By following this general explanation with a menu option that offers the ability to immediately create a prepaid account, consumers are more likely to make informed decisions.

Post-call prompts. In any situation (but particularly when the call recipient is discovering for the first time that a friend or relative is being held in a correctional facility), the called party may be preoccupied or distracted when they are listening to the initial recording. To mitigate consumer confusion in such situations, we encourage Securus to play a post-call recording (subject to technological capabilities) in cases where the incarcerated caller terminates the call or

³ See <https://securustech.net/about-us/index.html> (“As the largest incarcerated individual communications provider, we help maintain relationships between incarcerated individuals and their family and friends *through easy to use incarcerated individual calling options*” (emphasis added)).

⁴ We envision this option working as follows: the recipient could pay for the *current* call under Securus’s tariffed provisions governing the single call product (thus allowing the current call to be connected without delay), but the recipient would be prompted to stay on the line following the call, when they will be connected to the Securus office responsible for creating AdvanceConnect accounts.

the system terminates the call at the end of the paid period. This post-call recording could provide more information about the potential benefits of establishing an AdvanceConnect account. Alternatively, this information could be sent in a text message in situations where the call recipient is using an SMS-enabled device.

As a whole, the single call product is likely to confuse called parties who are not familiar with inmate communications services. With minimal modifications, Securus could change its call flow to provide basic information that can help consumers make more rational economic decisions. PPI encourages the Board to require such modifications before approving the Revised Tariff.

III. Conclusion

As discussed above, several provisions in the Revised Tariff reflect dramatic departures from information given by Securus earlier in this proceeding. PPI encourages the Board to carefully consider the issues raised herein and withhold its approval of the Revised Tariff until such time that Securus modifies the unreasonable provisions regarding prepaid funds and single call products.

Dated: February 8, 2021

Respectfully submitted,

PRISON POLICY INITIATIVE, INC.

/s/ Peter Wagner

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DECLARATION OF PETER WAGNER

I, Peter Wagner, declare as follows:

1. I am employed as the executive director of the Prison Policy Initiative (“PPI”). I am over the age of eighteen, and I make the following declaration based on my own personal knowledge. If called upon to testify concerning the matters expressed herein, I could and would competently do so under oath.

2. I attended the September 3, 2020 technical conference in the above-captioned proceeding. During that hearing, Securus representative Michael Lozich and I engaged in a discussion regarding Securus’s “single call” products described in § 3.3.5 of Securus’s proposed tariff. At the conclusion of this discussion, Securus agreed to provide PPI with a sample call script for the single call product.

3. On January 29, 2021, Securus sent me a copy of the call script requested at the technical conference. A true and correct copy of that call script is attached hereto as **Exhibit 1**.

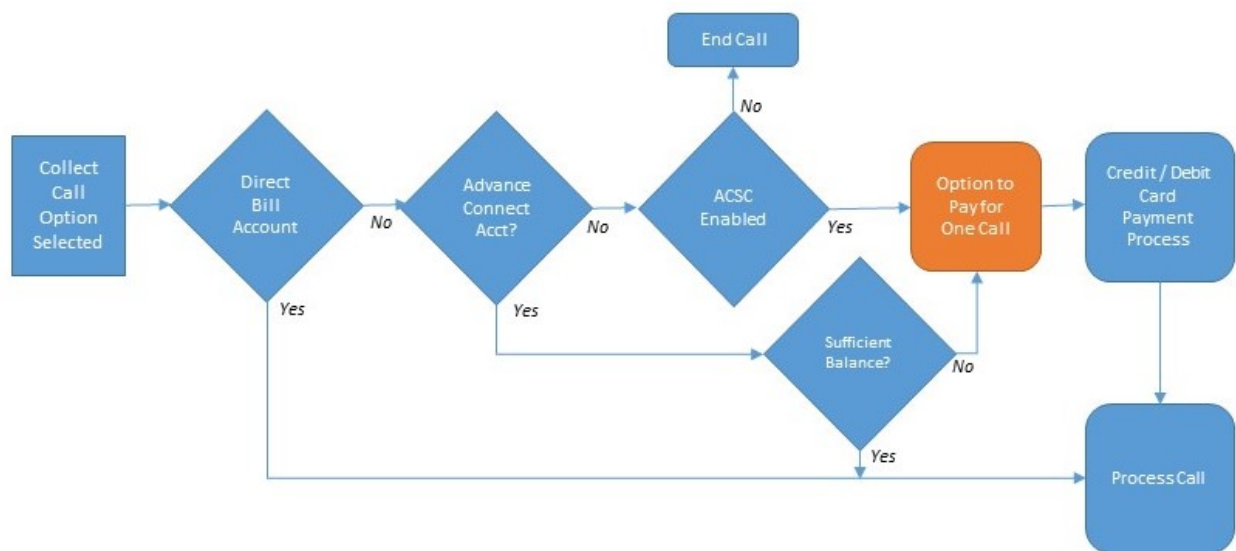
I certify under penalty of perjury and pursuant to Iowa Code § 622.1 that the preceding is true and correct.

/s/ Peter Wagner
Peter Wagner

2/8/2021
Date

AdvanceConnect SingleCall Call Flow

The general path of the call flow involving an AdvanceConnect SingleCall ("ACSC") is set forth in the following diagram, in which a caller selects the Collect Call option to connect a telephone call, and then Securus' platform will determine whether there are any established billing arrangements (i.e., a Direct Bill arrangement or an AdvanceConnect account with sufficient funds for the call charges). If the call cannot be connected through an established billing arrangement and the facility has enabled ACSC, then a called party will have the option to connect the call using ACSC.



All calls begin with a selection of the language required and selection of the type of call service being requested. These services are site specific and dependent on the services contracted for that site:

Caller hears:

For English, press "1". [Other language selections offered will also be listed: For Spanish, press "2"; for Mandarin, press "3"; for Russian, press "4", etc.]

After language selection:

For a Collect Call, press "1"
 For a Debit Call, press "2"
 For Commissary, press "3"
 For a Calling Card, 'press "4"
 For [other services], press "[_]"

The remainder of the call flow depends on the call-type selection made by the inmate.

If the caller selects a Debit Call, the call will be connected if there is sufficient funds in the account.

If the caller selects a Collect Call:

Caller hears

"Enter your PIN number now."

[Enters PIN]

If it's a valid PIN:

"Please enter the area code and phone number you are calling now."

[Enters 10-digit phone number]

"Your total available talk time for this call is [XX] minutes. Additional called party restrictions may apply. This call is subject to recording and monitoring. Also note your called party might be listening to instructions about placing money into your commissary account by calling 800.844.6591 or visit correctionalbillingservice.com."

If called number is a cell number:

"If your call is not connected, you will be offered the option to leave a voicemail."

"You may hear silence during acceptance of your call. Please continue to hold."

If (a) there is an AdvanceConnect Account associated with the dialed number and there is sufficient funds in the account for the call charges, or (b) there is a Direct Bill arrangement for billing the call charges to the called party, then the call will be connected with the standard prompts for acceptance of the call by the called party and acknowledgements of monitoring and recording.

If there is not an AdvanceConnect Account with sufficient funds or other established Direct Bill arrangement:

Caller and Called Party hears:

"This is a Collect Call from [name] an inmate at [site]."

Called Party hears:

"Our records show you do not have an account or enough funds to complete this call."

Caller and Called Party hears:

"To pay for just this call using your credit or debit card, press '1.'"

"To decline this call, press '2'."

"To block calls from this facility, press '6'."

"If you do not want to connect this call but would like to fund an account for future calls, please hang up and call 800.844.6591."

If the called party selects to connect the call:

"This call will cost [X] cents per minute plus any applicable federal, state, and local taxes, plus a one-time transaction fee of [Y]. You will only be charged the per-minute rate for the amount of time you were on the call."

Then the call will proceed to the called party providing payment information.

Caller hears: "Please hold while the person you are calling is entering information to pay for this call."

The called party will then be requested to enter payment information, while the Caller hears silence.

Called Party hears: If there is a credit or debit card on file:

"Our records show that you have a card on file ending in [XXXX]. If you would like to reused card on file, press '1'."

If there not a credit or debit card on file:

"We currently accept Visa or MasterCard. Please enter a valid 16-digit credit or debit card number now."

[Enters card number]

"Please enter the card expiration date using a 2-digit month and 2-digit year."

[Enters 4-digit expiration date]

"You entered [XXXX]. If this is correct, press '1', if not, press '2'."

[Enters 1]

"Please enter the 3-digit CVV code printed on the back of your credit or debit card."

[Enters CVV]

"Please enter the 5-digit billing ZIP code associated with the credit or debit card."

[Enters ZIP code]

"You entered [XXXXX]. If this is correct, press '1', if not, press '2'."

[Enters 1]

"Your payment has been approved."

The call then proceeds to the parties consenting to recording and monitoring, and connecting the call.

Each of Caller and Called Party hear: "This call is subject to recording and monitoring. To consent to recording and monitoring, please press '1'. To disconnect, press '2'."

[Both parties must consent to connect the call.]

"You may start the conversation now."